

FACT FINDING PROCEEDINGS  
PURSUANT TO MEYERS-MILIAS BROWN ACT

In the matter of a controversy between  
**CITY OF PALO ALTO,**  
Employer,  
and  
**PALO ALTO POLICE OFFICERS  
ASSOCIATION,**  
Union,  
Involving retiree health benefits.

**REPORT OF FACTFINDING  
PANEL AFTER HEARING**  
*Case No. SF-IM-2961-M*

Chairperson: Catherine Harris, Esq.  
Arbitrator • Mediator  
Sacramento, California

Union Panelmember  
Sgt. Barry Donelan  
President, Oakland Police Officers Assn  
Oakland, California

Employer Panelmember  
Everardo "Lalo" Perez  
Chief Financial Officer  
Palo Alto, California

For the Union: Peter A. Hoffman, Esq.  
Rains Lucia Stern, P.C.  
Pleasant Hill, California

For the Employer: Melissa C. Tronquet  
Manager of Employee Relations<sup>1</sup>  
Palo Alto, California

**Background**

This factfinding arises out of an impasse in negotiations pertaining to the single issue of health benefits to be provided to *future* retirees. The competing proposals at issue herein do not seek to impact the health benefits provided to current retirees. Prior to the factfinding hearing, the **CITY OF PALO ALTO** (herein "the City") and the **PALO ALTO POLICE**

<sup>1</sup> At the time of the hearing, Ms. Tronquet was serving as Senior Deputy City Attorney.

1 **OFFICERS ASSOCIATION** (herein "PAPOA") reached agreement on all outstanding  
2 issues, reduced all of their agreements to writing, and jointly submitted the sole remaining  
3 issue to factfinding. The factfinding panel is now being asked to make its recommendation  
4 as to which of two proposals to modify Section 20 (Retirement Medical Plan) of the parties'  
5 Memorandum of Agreement (herein "MOU") is more appropriate when analyzed in  
6 accordance with the statutory factors set forth in the Meyers Milius Brown Act, as amended  
7 (herein "the MMBA").

8 An evidentiary hearing was held on July 9 and 10, 2012 at Palo Alto, California. By  
9 agreement of the parties, the proceedings were transcribed by a certified shorthand reporter  
10 and copies of the transcript were provided to the factfinding panel and the parties.<sup>2</sup> At the  
11 hearing, the parties were afforded a full opportunity to present testimonial<sup>3</sup> and documentary<sup>4</sup>  
12 evidence, to cross-examine each other's witnesses and to make argument to the factfinding  
13 panel. In accordance with a stipulation reached at the hearing, post-hearing briefs had been  
14 received by the factfinding panel as of September 21, 2012 at which time the record was  
15 tentatively closed<sup>5</sup> and the matter was taken under submission by the panel.

#### 16 **The Panel's Request for Additional Information**

17 In a letter dated October 7, 2012, the panel, after commencing its deliberations,  
18 requested clarification on several points but particularly with regard to comparing the  
19 financial impact of the parties' proposals. To this end, the panel requested that the parties  
20 supply their respective responses to the following questions:

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22 <sup>2</sup> Marcie Scott, the Employer's Employee Relations Manager, and James Reifschneider,  
23 PAPOA's President, attended the hearings which were open to the public.

24 <sup>3</sup> The City presented the testimony of Darrell Murray, John Bartel, and James Keene.  
25 PAPOA presented the testimony of Lynne Johnson, Wayne Benitez and Ron Watson.

26 <sup>4</sup> During the course of the hearing, the panel received the following documents into  
27 evidence: Joint Exhibits "1" through "18," City Exhibits "1" through "6" and PAPOA Exhibits  
28 "1" through "20."

<sup>5</sup> At the hearing, the factfinding panel reserved its right to request additional information as  
part of its deliberations.

- 1 1. Is it possible to make a short-term and/or long-term comparison between the
- 2 cost savings associated with each party's proposal?
- 3 2. What specific data (other than [the actuary's] reports) already contained in the
- 4 record would be helpful in comparing the cost-savings associated with each
- 5 party's proposal? and
- 6 3. Is there other data (not already contained in the record) that would be helpful
- 7 in comparing the financial impact of both parties' proposals? If so, is it
- 8 possible for the parties to agree to submit the information to the panel?

9 The panel also requested that the parties meet and confer to establish a schedule for  
10 responding to the panel's inquiries. This request ultimately resulted in the submission of a  
11 revised actuarial valuation (RAV) dated January 23, 2014 which was received by the panel  
12 on February 24.<sup>6</sup>

#### 13 **Procedural History Following Receipt of the RAV**

14 After the RAV was submitted, the parties requested additional time in which to meet  
15 and confer regarding the report's findings. On March 3, 2014, City Attorney Molly Stump  
16 notified the panel that she and PAPOA counsel Peter Hoffmann were jointly requesting a  
17 telephonic conference during which the City's actuarial expert John Bartel would make a  
18 brief presentation regarding his supplemental report followed by questions from the panel.  
19 On March 7, 2014, the panel met by telephone to discuss various issues raised by the  
20 supplemental report. The panel then sent an e-mail to counsel which stated in pertinent part:

21 [The] panel is uncomfortable with conducting a telephone conference/hearing with an  
22 expert witness whose previous testimony was transcribed and provided to the panel in  
23 writing. Given the technical nature of the material (not to mention the passage of  
24 time since we were originally presented with actuarial studies), the panel would much  
25 prefer a written transcript to make sure that we will be able to verify the correctness  
26 of our recollections of Mr. Bartel's testimony by reference to his verbatim statements.

27 The panel also requested any written instructions that were given to Mr. Bartel that would  
28 clarify exactly what the parties asked him to address in his report, clarification of the  
meaning of the phrase "updated understanding" that appears in Mr. Bartel's report, and a

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<sup>6</sup> The panel was not informed as to the precise reasons for the delay in the preparation of the revised report other than the increased demand for actuarial reports occasioned by an increase in the number of MMBA factfindings. At some point during the hiatus, the parties also engaged in further discussions about a possible settlement of the dispute.

1 brief statement of how each party interprets the supplemental report, especially as to how the  
2 report answers questions previously posed by the panel in its letter dated October 7, 2012.  
3 The parties were also directed to develop some mutually agreed upon mechanism for  
4 updating the panel on any material changes that may have occurred from either a collective  
5 bargaining or financial perspective during the long hiatus from the close of the July 2012  
6 hearings to the receipt of the supplemental report.

7 On April 17, 2014, City Attorney Molly Stump notified the panel that the parties had  
8 agreed to submit simultaneous letter briefs addressing the panel's questions and any other  
9 items the parties deemed relevant.<sup>7</sup> In an e-mail dated May 2, 2014, the panel notified  
10 counsel for the parties of its unanimous agreement to allow the case to go forward as jointly  
11 requested. A briefing schedule was established and, as of May 21, 2014, the supplemental  
12 briefs of both parties had been received by all members of the panel.<sup>8</sup> On May 21, 2014, the  
13 record was closed and the matter was taken under submission.

#### 14 **The History of the Tier I and Tier II Retiree Health Benefits**

15 Historically, the City has provided a fully paid single-party retiree health benefit,  
16 originally provided under a self-insured program, to all PAPOA-represented employees. In  
17 the early nineties, the City joined the CalPERS PEMHCA plan and became subject to  
18 CalPERS rules, e.g., employees became eligible to retire with fully paid retirees health  
19 benefits after accruing five years of CalPERS service. In the early nineties, the City also  
20 instituted an enhanced retirees health benefit in the form of dependent coverage pursuant to  
21 the CalPERS PEMHCA plan that increased coverage by 5% in each calendar year until  
22 2013 when the City began providing 100% coverage. Employees hired before the tier 2  
23 benefit was instituted in 2006 are currently offered different benefits depending on their

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24  
25 <sup>7</sup> This notification was received in the neutral chairperson's office while she was out of the  
26 country on vacation. Upon her return from vacation, the panel met by telephone and unanimously  
27 agreed to allow the case to go forward in the manner jointly requested by the parties. By agreement  
28 of the parties, factual material (new evidence) was presented as part of the final round of briefing.

<sup>8</sup> The parties had earlier allowed the panel a 60-day deliberation period due to the logistical  
problems associated with panel deliberations.

1 retirement dates, i.e., the City pays the full amount of any CalPERS plan selected by a retiree  
2 up to the family level for employees who retired prior to December 31, 2007. Employees  
3 who have retired or will retire after January 1, 2008 receive a benefit up to the amount of the  
4 second highest plan offered by CalPERS.

5 At the hearing, PAPOA presented testimony from various current and former police  
6 employees, including former Chief of Police Lynne Johnson, that over the course of many  
7 years the "five-year vesting period" and the enhanced benefit (the 22892 ( c ) schedule for  
8 dependent coverage) were used as effective tools in recruiting and retaining qualified police  
9 officers.<sup>9</sup> Special Operations Sergeant Wayne Benitez similarly testified that when he came  
10 to the City in March of 2000 after spending 11 years as a police officer for the City of  
11 Atherton, he was told that after five years he would be eligible for fully paid health benefits  
12 at the time of his retirement and that his dependents would also be eligible for fully paid  
13 health benefits. When he considered lateraling to the Sonoma County Sheriff's Office about  
14 five years ago, his lieutenant persuaded him to stay, i.e., noting that you cannot walk away  
15 from lifetime medical. In the same vein, Police Captain Ron Watson, formerly an employee  
16 represented by PAPOA, testified that he never set aside any funds for health costs in  
17 retirement in reliance on what he had been told about his benefit program and that now, as he  
18 approaches retirement age, he is being forced to "scramble" to set aside sufficient funds to  
19 secure full health coverage for himself and his family.<sup>10</sup>

20 In 2006, in an effort to contain costs, the parties agreed to establish a second tier of  
21 retiree health benefits for newly hired employees in accordance with Government Code  
22 section 22893, i.e. vesting to start at 10 years with 50% at 10 years (five years service in Palo  
23

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24 <sup>9</sup> The richness of this benefit is captured in the phrase (the golden handcuffs) used by the  
25 City's police employees to describe why experienced tier 1 personnel are reluctant to accept offers  
26 of employment from other jurisdictions. With regard to the richness of the City's overall retirement  
27 program, the City's actuarial consultant John Bartel provided unrebutted testimony that currently  
28 less than 25-30% of California agencies offer some form of dependent health coverage to retirees.

<sup>10</sup> PAPOA also cites references to payment of lifetime medical to PAPOA represented  
employees that appear in the City's Comprehensive Annual Financial Reports and other documents.

1 Alto and the rest of service may be PERS service) increasing by 5% with each additional year  
2 of service with the full retiree health benefits, equivalent to the average of the four most  
3 utilized plans, after 20 years. <sup>11</sup> Consistent with PERS requirements, a gradually increasing  
4 dependent coverage program (5% each year until 2013 at which time dependents would have  
5 90% coverage) was also applied to tier 2 employees. Notwithstanding the efforts to achieve a  
6 cost savings through the establishment of a second tier, costs associated with providing  
7 retiree health coverage continued to escalate.

8 In 2007, in an ongoing effort to address spiraling health costs, the parties agreed to  
9 modify the retirees health benefit for both tier 1 and tier 2 employees. Recognizing the  
10 extraordinary cost of the PERSCare plan provided by PEMHCA, the parties agreed to cap  
11 the benefit for both tier 1 and tier 2 employees at the level of the second most expensive plan.  
12 At this time, PAPOA persuaded many of its members to enroll in the less expensive PORAC  
13 plan, i.e., a plan under PEMHCA in which only public safety employees are allowed to  
14 participate.

#### 15 **Discussions between All Employee Groups and the City**

16 In response to a shrinking economy following on the heels of the 2008 recession, the  
17 City became increasingly concerned that its revenues were not keeping pace with escalating  
18 health costs for both active and retired employees. In 2010, the City invited all of the unions  
19 representing its employees, as well as non-represented employee groups, to attend a meeting  
20 facilitated by the California State Mediation and Conciliation Service. As part of these  
21 negotiations, the City proposed that all employees pay 10% towards the cost of their medical  
22 benefits and that future retirees, including active and future employees, pay 10% of the cost  
23 of their medical insurance in retirement. The City projected a cost savings of \$129 million

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24  
25 <sup>11</sup> Per Government Code section 22893, the legislature implemented what has become  
26 known as "the weighted average" or weighted average minimum based on state enrollment in plans,  
27 i.e., the weighted average of the four plans with the highest enrollment. The weighted average is  
28 published yearly to enable participating employers to comply with their statutory obligation to  
provide a minimum benefit. Depending on the amount of the statutory minimum contribution and  
the plan selected by the employee, the employee may or may not have a fully funded retiree health  
benefit.

1 over 30 years if its proposal were to be accepted.

2 A coalition of all Palo Alto employees (both represented and unrepresented) offered  
3 to phase in a 90-10 program for active employees' contributions to health insurance with 5%  
4 in 2010 and 10% in 2011. This produced a savings of about 92 million over 30 years. The  
5 coalition also offered to cap the City's coverage to 90% of the second highest plan or its  
6 equivalent but employees hired prior to January 1, 2011 would still be eligible for fully  
7 funded health benefits in retirement. This second component would have saved 15.3 million  
8 over 30 years. As a third component, the employees offered to supplement the City's annual  
9 retirement contribution (ARC) yearly, i.e., ½ of 1% of salary in 2013 with 1% of salary  
10 starting in 2014 producing a savings of between \$207 and \$213 million over 30 years.<sup>12</sup>

11 At the hearing, PAPOA presented un rebutted evidence that the City rejected the  
12 coalition's proposals (known as "Option 12"), not because it was less cost effective overall,  
13 but because it did not agree to a 90-10 split in the cost of retiree's benefits. During these  
14 meetings, the City continued to emphasize what it regarded as one of its guiding principles,  
15 i.e., "generational equity." The City has defined generational equity as "passing on to the  
16 next generation of workers as good a deal as the predecessor generation of workers."

### 17 **The 2011 Negotiations**

18 The Employer presented the testimony of Darrell Murray, a negotiator employed by  
19 the Industrial Employers and Distributors Association (IEDA) in Emeryville, California. For  
20 approximately the past six years, Murray has been retained by the City to serve as its chief  
21 spokesperson in negotiations and to advise the City Manager and the Council on contract  
22 administration and labor relations issues. In recalling the last round of PAPOA  
23 negotiations,<sup>13</sup> Murray testified that there were some preliminary informal discussions off  
24 the record that took place in late spring of 2011 but negotiations did not begin in earnest

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26 <sup>12</sup> The ARC is the normal cost (value of benefits earned in the current year) plus the  
27 amortization of unfunded actuarial accrued liability (portion of AAL not covered by assets).

28 <sup>13</sup> As this report is being prepared, the impasse at issue herein pertains to an expired contract  
and the parties are commencing negotiations for a successor agreement.

1 until early July of 2011.<sup>14</sup> The parties met approximately six times between the first August  
2 meeting and the end of September. They then met intermittently up until January prior to  
3 declaration of impasse in February of 2012. Initially, the City opened the subject of retiree  
4 medical for informal discussion but ultimately, the City placed on the table a proposal similar  
5 to what it had negotiated with the large SEIU units, the firefighters, and the managers, i.e.,  
6 calling for a 10% contribution toward the premium by future retirees in tier 1 with the City  
7 picking up the difference up to the second highest plan.<sup>15</sup> According to Murray, the statutory  
8 minimum contribution required by CalPERS was still well below the 90% contribution that  
9 the City was willing to make for tier 1 employees.<sup>16</sup>

10 According to Murray, the underlying rationale for the proposal was the “seemingly  
11 never ending trajectory of rising health costs.” In reviewing its long-term financial health, the  
12 City determined that it could no longer assume sole responsibility for the full cost of  
13 employee health benefits where the unfunded liability for retirees health insurance had grown  
14

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16  
17 <sup>14</sup> Special Operations Sergeant Benitez explained that the predecessor MOU was set to  
18 expire in July of 2010; however, in July of 2009, PAPOA agreed to defer a previously negotiated  
19 6% wage increase until July 2010. In July of 2010, PAPOA again agreed to defer the wage increase  
20 if the City would extend the contract for another year. The City declined this offer, stating that it  
21 would need further concessions. As the parties commenced negotiations, Measure D was about to be  
22 presented to the voters which would in November of 2011 eliminate binding arbitration for all  
23 public safety employees. Benitez also explained that the City’s last best offer before impasse  
24 included a 6% wage decrease, elimination of retention pay, a 9% employee pension contribution,  
25 and a 10% contribution to medical for actives (both while employed and at the time of their future  
26 retirements).

27 <sup>15</sup> The 90-10 Plan was unilaterally implemented both in the case of the managers and SEIU  
28 represented employees but SEIU subsequently accepted it. The LAFF unit ratified an agreement  
implementing the measure.

25 <sup>16</sup> With regard to employees hired on or after January 1, 2006, the City’s proposal continues  
26 to be that it will pay the entire minimum contribution set by CalPERS under California Government  
27 Code section 22893. Thus, as explained herein, a tier 2 employee at the end of the 20-year schedule  
28 may still retire with a fully funded retiree’s medical benefit (depending on the plan selected) while a  
tier 1 employee with more years of service, per the City’s proposal, pays the same portion of his  
medical costs in retirement as an active employee.



1 about 20% in the past two years from 107 million to between 133 and 134 million.<sup>17</sup> The  
2 City's position was that since the lowest paid employees represented by SEIU and the  
3 managers had already become subject to the same program, the sacrifice should be  
4 distributed system wide. The City also took the position (a position that it has steadfastly  
5 maintained throughout this prolonged proceeding) that future retirees should contribute  
6 because they are the prime beneficiaries of the unfunded liability.<sup>18</sup>

7 The City has consistently opposed any plan whereby, in its view, the impact of the  
8 unfunded liability falls disproportionately on the less senior employees. The City's  
9 commitment to requiring retirees to contribute to the escalating costs of health insurance is  
10 reflected in the following questioning of City negotiator Darrell Murray by PAPOA counsel:

11 Q: You had stated earlier that labor had presented an idea that was perceived to  
12 save more money than the 90-10; is that correct?

13 A. Couple of them, I believe.

14 Q. And the City rejected the ideas because it didn't require contribution from the  
15 future retirees; is that correct?

16 A. Correct. That was --That was the first foremost obstacle, and we didn't get  
beyond that.

17 In short, proposals that did not require future retirees to make a contribution were considered  
18 by the City to be lacking in generational equity.

19 As a part of the negotiations for the current agreement (all terms except Section 20),  
20 the parties agreed that active employees would begin contributing 10% of the cost of their  
21 medical insurance up to the family level of the second highest plan offered by CalPERS.  
22 PAPOA accepted this proposal but resisted efforts to change retiree health benefits for active  
23 employees, especially those who are approaching retirement, by requiring future tier 1

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25 <sup>17</sup> A 2011 study also showed an annual increase of \$3.8 million to the annual required  
26 contribution (ARC) to fund retiree health benefits.

27 <sup>18</sup> As explained herein, this point is hotly contested by PAPOA in its supplemental brief, i.e.,  
28 citing John Bartel's report for the proposition that more than 75% of the unfunded liabilities are  
attributable to existing retirees.

1 retirees to also contribute 10% of the cost of their medical insurance in retirement. In an  
2 effort to protect the expectations of tier 1 members, PAPOA has taken the position in  
3 bargaining that the City should continue to bear the cost of retirees health insurance to the  
4 extent that its contribution would never fall below the full amount of least expensive medical  
5 plan, or the weighted average of the four highest medical plans, whichever amount is  
6 higher.<sup>19</sup>

7 Pursuant to the last round of bargaining, active employees currently pay 90% of the  
8 premium for single and/or dependent coverage but only up to the second most expensive  
9 plan. Consistent with the 90-10 Plan for active employees, the City now proposes to continue  
10 the language of Article 20 (Retirement Medical Plan) with the exception of the following  
11 additional language:

12 However, the City contribution for an employee hired before January 1, 2006 who  
13 retires on or after June 1, 2012 shall be the same contribution amount it makes for  
14 active City employees, except that employees retiring before [first available date after  
15 ratification & adoption of appropriate resolutions] will not be required to pay any  
16 premium contribution. Emphasis supplied.

17 While the current apportionment of retiree health costs would be "90-10" based on what  
18 active employees are now contributing, PAPOA argues that this language will be used in the  
19 future to expand the percentage of employee contribution. On the other hand, the City argues  
20 that the panel should not base its choice of proposals on speculation as to what concessions  
21 the City might seek in the future as any further changes will be the product of negotiations  
22 between the parties.<sup>20</sup>

23 <sup>19</sup> PAPOA argues that its proposal forces the City to deliver on its contractual promise to  
24 provide tier 1 employees with a benefit at least as great or equal to the benefit provided to tier 2  
25 employees with 20 years of service. PAPOA also points out that it has accepted responsibility for  
26 10% of the cost of medical for active employees, 9% of Employer Paid Member Contribution  
towards pensions, as well as a 1% salary reduction and the loss of two paid holidays all of which  
reduced pensionable income. The City responds by citing similar levels of concessions made by  
other groups during the same time period.

27 <sup>20</sup> The City presented evidence that in March of 2013, the City and SEIU agreed to fixed  
28 City contributions in lieu of the 90-10 Plan. This approach creates the possibility that during the  
term of the agreement, employees and retirees who choose a lower-cost plan can reduce their

**A Summary of Each Proposal in Comparison to the Status Quo**

The following chart illustrates the status quo, as well as both parties' proposals, regarding retiree medical benefits:

STATUS QUO	CITY PROPOSAL	PAPOA PROPOSAL
<b>Hired before 1-01-06</b>  After five years of service:  City pays 100% of premium up to second highest plan  City pays 100% dependent coverage from 2013 going forward	<b>Hired before 1-01-6</b>  City makes same contribution as it makes for active employees ( <i>currently 90%</i> ) Remainder ( <i>currently 10%</i> ) to be paid by employee	<b>Hired before 1-01-06 and retired before 8-01-12</b>  City pays 100% of monthly premium for second most expensive plan or monthly medical premium provided to Tier 2 employee whichever is greater  <b>Hired before 1-01-06 and retired after 8-01-12</b>  City contribution equal to amount of contribution for active employees except no less than 1) least expensive plan or 2) monthly medical premium provided to Tier 2 employees, whichever is greater

STATUS QUO	CITY PROPOSAL	PAPOA PROPOSAL
<p><b>Hired after 1-01-06</b></p> <p>CalPERS vesting schedule in GC §22893: 50% after 10 years if 5 years with City; with each additional year another 5% so at 20 years (depending on plan selected and amount of statutory contribution) employee may have fully paid retiree health benefit</p> <p>Minimum contribution set by CalPERS (weighted average of four most utilized health plans)</p> <p>Tier 2 can retire with fully paid medical depending on which plan selected</p> <p>Maximum contribution for family members is 90% per GC §22893</p>	<p><b>Hired after 1-01-06</b></p> <p>No change</p>	<p><b>Hired after 1-01-06</b></p> <p>No change</p>
		<p><b>Hired after 8-01-12 Tier 3</b></p> <p>City to provide the least expensive single party insurance benefit after 20 years of service- no dependent coverage</p>

As reflected in the above summary, the City's proposal does not seek to affect the health benefits of individuals who have already retired, or the retiree health benefits of tier 2 employees.<sup>21</sup>

#### The First Actuarial Valuation

Bartel Associates, an actuarial consulting firm, performed the GASB 45 actuarial

<sup>21</sup> During the first round of briefing, PAPOA counsel noted that once the City determined that it could not legally implement a 90-10 Plan for tier 2 employees (due to the statutory minimum), it then decided to limit the application of its plan to the longest tenured employees who comprise tier 1. In supplemental briefing, the City has not disputed this characterization.

1 evaluation for the City, i.e., a first evaluation as of January 1, 2011 and the second one six  
2 months later as of June 30, 2011. The purpose of the evaluations was two-fold: 1) to give the  
3 City information on pre-funding benefits to make sure that there is money to pay the benefits;  
4 and 2) to comply with Governmental Accounting Standard Board statement No. 45. Public  
5 entities must reflect on their books the difference between what they have been told that they  
6 should be contributing to the CalPERS irrevocable trust and what they are actually  
7 contributing (the so-called net OPEB obligation or asset). Bartell testified that at this time  
8 only 40-50 percent of his city clients have started to set aside money in a trust to fund retirees  
9 health benefits. Of those cities who do set aside money only two thirds of them are paying the  
10 full ARC. Bartell further explained that a little less than a third of the ARC<sup>22</sup> is attributable  
11 to active employees with two thirds of the ARC being attributed to individuals who have  
12 already retired.<sup>23</sup> Bartel also stated: "it matters a lot what medical plan you're in."

13 In his testimony before the panel, Bartel admitted that there has been an increase in  
14 the rate of retirements which has, in turn, contributed to an increase in the City's actuarial  
15 accrued liability. His original analysis reflects that the City proposal would reduce the City's  
16 unfunded actuarial accrued liability by \$505, 000 whereas the PAPOA proposal would  
17 reduce the City's unfunded actuarial accrued liability by \$183,000; however, this report does  
18 not recognize any meaningful cost savings resulting from PAPOA's proposal for a third tier  
19 benefit as actuaries typically do not analyze the impact of savings to be realized from  
20 employees who have not yet been hired. The funded ratio (the percentage of actuarial  
21 unfunded liability covered by assets) has been calculated at 27% under both parties'  
22 proposals.

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23  
24 <sup>22</sup> As previously noted, the ARC is the sum of the normal cost and the amortization of  
25 unfunded liability. Here the normal cost of benefits expected to be earned in the next fiscal year, as  
26 projected by Bartel, is approximately \$700, 000 for PAPOA represented employees and the  
27 amortization of unfunded liability (portion of benefits paid for service that has already been  
28 rendered including the service of retirees) is approximately \$1.064 million).

<sup>23</sup> Bartel testified that \$18 million of \$23 million in actuarial accrued liability is attributable  
to people who have already retired.

1 **The Revised Actuarial Valuation (RAV)**

2 The RAV, dated January 23, 2014, presents an analysis of the comparative costs of  
3 both parties' proposals using updated participant data for tiers 1 and 2 as of August 1, 2013  
4 and a data set for five years worth of new hires to take into account PAPOA's proposal for a  
5 third tier.<sup>24</sup> The second study notes that the first study analyzed PAPOA's proposal for new  
6 employees hired after August 1, 2012 as a City contribution of 90% of the second most  
7 expensive plan for the Bay Area Region OR the least expensive employee-only plan,  
8 whichever is greater. In the updated study, PAPOA clarified that their proposed City  
9 contribution for employees hired after August 1, 2012 is only the least expensive employee  
10 only plan.<sup>25</sup> Based on these revised assumptions, the RAV reflects that the City's proposal  
11 would reduce the City's unfunded actuarial accrued liability by \$389,000 whereas the  
12 PAPOA proposal would reduce the City's unfunded actuarial accrued liability by \$184,000.  
13 Thus, the savings associated with both parties' proposals represents only a 1% change in the  
14 funded ratio, i.e., from 26% to 27%.

15 **The City's Present Financial Condition**

16 While other cities in California have experienced declining property tax revenue, the  
17 City has maintained a stable revenue base and has continued to fund new services, e.g., a  
18 fifth public library financed, in part, through a bond measure and private donations. The  
19 City has also been able to dedicate funds to infrastructure. City Manager James Keene  
20 testified that despite new sources of revenue (two shopping centers and hotel development),  
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22  
23 <sup>24</sup> In post-hearing brief, PAPOA counsel notes that 15 new officers have been hired since the  
24 proposed effective date of the PAPOA proposal for a third tier. Citing slides 18 and 19 of the RAV,  
25 PAPOA notes that the normal cost of PAPOA's proposed tier 3 benefit is approximately 50% less  
26 than the normal cost of the tier 2 benefit, thus producing an additional savings of \$57,948. This  
27 data was not available to Bartel Associates prior to issuance of the RVA.

28 <sup>25</sup> The second study also reflects a lower number of active employees, as well as other  
factors including lower average retirement age, average service and salary from the 2011 valuation  
data and uses 2013 and 2014 medical premium amounts (rather than the 2012 premiums used in the  
first study).

1 he anticipates that the City will ask the voters to approve new taxes due to the rising costs of  
2 benefits and services. Noting that in the private sector it is not uncommon for the employer  
3 to pay only 70% of health costs, City Manager Keene acknowledged that the efforts to rein in  
4 unfunded liability for retiree health benefits is part of a program to garner public support for  
5 future tax increases. Keene also noted that, in formulating its proposals and policies, the City  
6 has also considered that police officers who generally retire at 50 are more likely to get a  
7 second job and "vest" in a second set of benefits than lower paid employees who retire much  
8 older.

### 9 **The Parties' Evidence of Comparator Agencies**

10 As demonstrated by the table at page 20 of the City's closing brief,<sup>26</sup> the City's  
11 existing family coverage benefit is more generous than most of the comparator agencies, i.e.,  
12 it is far more common for cities, such as Redwood City, Mountain View, Hayward, Milpitas,  
13 and San Leandro to offer some percentage of single coverage. Concord pays up to the Kaiser  
14 amount for selected plan, except that, effective January 1, 2011, Concord and the retiree split  
15 annual premium increases equally. Walnut Creek, another comparator identified by the City,  
16 makes no contribution for retiree health benefits on behalf of its police officers. Santa Clara  
17 reimburses up to \$264 per month for un-reimbursed pre-medicare health coverage and \$159  
18 per month for un-reimbursed medicare supplemental coverage. Even among those agencies  
19 who offer more than single-party coverage in retirement, e.g., Alameda, Berkeley, and  
20 Fremont, the benefit is capped at the two-party rate and has a service requirement.

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23 <sup>26</sup> At the hearing, the parties presented a third binder of joint exhibits containing all of the  
24 evidence on which the table at page 20 of the City's closing brief, dated September 17, 2012, is  
25 based. This third binder was not received into evidence, primarily due to the huge volume of  
26 material that was presented by both parties, as well as the fact that neither party devoted much  
27 hearing time to a comparison of retiree medical benefits in comparable jurisdictions. In the interest  
28 of fairness, the panel, by letter dated October 7, 2012, invited PAPOA to comment on the material  
or to present any other material that would shed further light on the table. PAPOA did not respond  
to this issue or object to consideration of the data contained in the table. Given that the parties had  
intended to jointly present this material and in the absence of any objection from PAPOA, the panel  
has considered the information as if it had been jointly submitted by the parties.

1 **The City's Evidence of Internal Comparators**

2 The City makes much of the fact that other employee groups have already agreed to  
3 the same language that is being proposed in the police unit. As of the date of the hearing,  
4 SEIU, IAFF, the Fire Chiefs, and non-represented members of management were already  
5 subject to the City's 90-10 Plan for retiree medical coverage. The City also presented  
6 evidence that the City Council, as a matter of policy, strives to make similar structural  
7 changes to compensation and benefits for all employee groups.<sup>27</sup>

8 **POSITION OF THE CITY**

9 Despite its reputation as an affluent community, the Employer, like virtually every  
10 other municipality in California, is faced with a challenge. Increases in revenues are not  
11 keeping pace with increases in the cost of health benefits. This is not just an issue of cost  
12 savings but also an issue of fairness. All City employees should have the same benefits, and  
13 the City's residents want and need to know the City is engaging in prudent financial planning  
14 in order to preserve services at a high level into the future. Since other City employees are  
15 already subject to the language being proposed by the City, insuring that all employees make  
16 similar benefit contributions is important for internal equity, fairness and employee morale.  
17 Moreover, the City's proposal is more effective in achieving a cost savings. A proposal for  
18 the City to pay 100% of a plan (even a less expensive plan than what is currently in place)  
19 whose future cost cannot be determined undermines the City's goal of prudent financial  
20 planning. Any argument that the City's police officers have a vested right to receive a fully  
21 paid retiree's health benefit is not appropriate in a factfinding proceeding.

22 **POSITION OF PAPOA**

23 The PAPOA proposal provides a more comprehensive, legally sound, and sustainable  
24 alternative than the 90-10 plan proposed by the City. Recognizing that the vast majority of  
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26 <sup>27</sup> Addressing PAPOA's concern that benefits for tier 2 employees may exceed benefits  
27 offered to tier 1 employees if the City proposal is accepted, the City has presented evidence that  
28 during 2014 the amounts contributed on behalf of tier 2 employees remained significantly lower  
than the City's contributions for all other employees.



1 the City's unfunded liability is solely attributable to existing retirees, the PAPOA proposal  
2 provides substantial cost savings, honors the vested rights of employees, and is consistent  
3 with the existing two-tier structure. The history of the bargaining relationship between the  
4 City and PAPOA supersedes in importance the relationship between the City and other  
5 employee groups. Contrary to what tier 1 employees were promised, the City seeks to tie all  
6 employees to what the actives get, leaving in isolation the tier 1 employees (the most senior  
7 employees and roughly half of the employees represented by PAPOA) with no minimum  
8 retirees health benefit. The RAV shows that the PAPOA proposal provides both greater  
9 immediate cost savings to the City and a more fiscally sound long-term strategy for reducing  
10 OPEB liability.<sup>28</sup> The City seeks only to reduce the retirement benefits of active tier 1  
11 members such that each time a tier 1 member retires, the City's unfunded liability grows and  
12 savings that would have been achieved through the PAPOA proposal are not realized.

#### 13 **RECOMMENDATION OF THE PANEL**

14 As a threshold matter, the panel is of the opinion that the parties' efforts to resolve  
15 what they both regard as a serious and worsening problem have been characterized by  
16 inexplicable delays, a hardening of both parties' positions, and a lack of creative  
17 collaboration. With the full cooperation of both parties, this dispute could have been brought  
18 to a conclusion much earlier. What started out as a mutual effort to address unfunded  
19 liability for retiree health benefits (a laudable goal embraced by both parties) has now  
20 degenerated into a vortex of points and counterpoints that has only served to delay the  
21 realization of any cost savings for more than two years. This outcome has been detrimental to  
22 both parties.

23 As illustrated by the first and the revised actuarial studies, the differences in the cost  
24 impacts of both proposals is not so significant, standing alone, that the financial impact of the  
25 proposals compels the selection of either the City or PAPOA proposal. Just as the parties  
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27 <sup>28</sup> As previously noted, in arriving at its conclusion that the PAPOA proposal is more  
28 effective in reducing unfunded liability, PAPOA relies on data not considered by the actuaries.

1 (including other employee groups) were unable to agree on a solution during the coalition  
2 bargaining when the cost factor was neutralized by a more cost effective counterproposal  
3 from all the employee groups (including managers), the parties have continued down a  
4 contentious path despite significant narrowing of their *economic* differences. Under these  
5 circumstances and as required by the MMBA, the panel must recommend a settlement of the  
6 dispute based, not only on the issue of cost savings, but also on other non-economic factors.

### 7 THE STATUTORY FACTORS

8 Government Code section 3505.4 sets forth the following factfinding criteria to be  
9 considered as part of this impasse resolution procedure:

- 10 (1) State and federal laws that are applicable to the employer.
- 11 (2) Local rules, regulations, or ordinances.
- 12 (3) Stipulations of the parties.
- 13 (4) The interests and welfare of the public and financial ability of the public  
14 agency.
- 15 (5) Comparison of the wages, hours, and conditions of employment of the  
16 employees involved in the factfinding proceeding with the wages, hours and  
17 conditions of employment of other employees performing similar services in  
18 comparable public agencies.
- 19 (6) The consumer price index for goods and services, commonly known as the  
20 cost of living.
- 21 (7) The overall compensation presently received by the employees, including  
22 direct wage compensation, vacations, holidays, and other excused time,  
23 insurance and pensions, medical and hospitalization benefits, the continuity  
24 and stability of employment, and all other benefits received.
- 25 (8) Any other facts, not confined to those specified in paragraphs (1) through (7),  
26 inclusive, which are normally or traditionally taken into consideration in  
27 making the findings and recommendations.

28 The statute clearly provides that the above-listed factors must be considered by factfinders in  
arriving at their findings and recommendations but, beyond that, provides no guidance.<sup>29</sup>

Government Code section 3505.5 (a) merely directs the panel to make advisory findings of

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<sup>29</sup> The panel has examined the record in light of all the statutory factors focusing on those factors which are most relevant to the determination of this controversy.

1 fact and to recommend terms of settlement.

2 ***Stipulations of the Parties***

3 Consistent with the appendix to the current MOU that provides that impasse  
4 resolution procedures shall apply to the successor language for Section 20 (Retirement  
5 Medical Plan), the parties have jointly requested that the panel select one or the other of their  
6 final proposals. More importantly, all of the evidence presented by both parties was focused  
7 on a comparison of the two competing proposals. Consistent with the third statutory factor  
8 quoted above, the panel will select one of the proposals and will *not* propose a third  
9 alternative to the resolution of this controversy.<sup>30</sup>

10 ***The City's Financial Condition***

11 Despite its overall healthy financial situation, the City's concern that its unfunded  
12 liability for retiree health expenses is growing faster than its revenues is not without  
13 foundation. As it now stands, the City has, at best, only set aside a fraction (less than 27%)  
14 of the costs of funding retiree benefits for which the City has already accrued a significant  
15 unfunded liability. Apportioning costs between the employer and the employee is a more  
16 reliable long-term approach than providing less expensive plans with fewer benefits,  
17 especially in an era of escalating health costs. In today's volatile health insurance market,  
18 there is no way of predicting what the least expensive plan will cost in the future, or what  
19 benefits the least expensive plan will offer. Added to the list of uncertainties is the unknown  
20 consequences attached to less expensive plans that do not meet the criteria of the new federal  
21 healthcare law. Finally, there is some logic to the City's position that employees who are  
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23 <sup>30</sup> Although a third alternative is not being recommended by the panel, the panel is still of  
24 the opinion that the parties should have been able to find a mutually agreeable solution, consistent  
25 with CalPERS rules, by further exploring such alternatives as the fixed contribution rates seen in the  
26 most recent SEIU agreement, or the possible inclusion of all employees in tier 2 (the City has noted  
27 that the statutory minimums for tier 2 employees in 2014 are significantly lower than the City's  
28 contributions for all other employees). Although these and other alternatives would appear to offer  
productive avenues for further discussion, there are no actuarial studies in the record before the  
panel that would serve to establish the cost effectiveness of the proposal accepted by the SEIU unit,  
or of any other proposal other than the parties' final offers, in reducing the City's unfunded liability.

1 sharing in the cost of their retiree health insurance are more likely to take cost into  
2 consideration in selecting a medical plan in retirement.

3       Even though the City has historically paid the entire cost of medical benefits for  
4 active and retired employees, dramatically increasing health benefit costs have resulted in a  
5 burgeoning unfunded liability that, absent a dramatic turnaround in health costs, will not be  
6 sustainable in the future *unless corrective action is taken*. Indeed, PAPOA has not  
7 challenged the need for reform as evidenced by its participation in the coalition  
8 recommending Option 12 and its more recent proposals at the bargaining table. Despite its  
9 arguments regarding the immutability of tier 1 benefits, PAPOA has also proposed  
10 modifications to tier 1 in the form of less costly plans, as opposed to the City's proposed cost  
11 sharing. The very nature of the proposals presented by both parties represents a joint  
12 acknowledgment that affirmative steps must be taken to ensure payment of health benefits to  
13 future retirees. Under these circumstances, the panel must select the proposal which, not  
14 only insures that earned retiree benefits will be paid without disruption to City operations  
15 and services, but also the proposal which is more likely to promote a qualified and stable  
16 police force for the foreseeable future.

### 17 *The Comparator Cities*

18       As noted by the City in post-hearing brief, its existing family coverage benefit in  
19 retirement is more generous than most of the agencies competing for the same work force,  
20 i.e., it is far more common for cities like Redwood City, Mountain View, Hayward, Milpitas,  
21 and San Leandro to offer some percentage of single coverage. Even among those agencies  
22 who offer more than single-party coverage in retirement, i.e., Alameda, Berkeley, and  
23 Fremont, the benefit is usually capped at the two-party rate and has a service requirement.  
24 Based on this data, the panel concludes that if the City proposal were to be implemented, the  
25 resulting retiree health benefit structure would still be more generous than many of the  
26 comparable cities because the City would continue to provide coverage at the family level.  
27 On the other hand, were the PAPOA proposal to be accepted, the panel further concludes  
28

1 that the benefits offered to retirees (single party coverage under the least expensive plan after  
2 20 years of service with no dependent coverage) would place the City at a competitive  
3 disadvantage by taking the City out of the 25-30% of jurisdictions that provide some form of  
4 dependent coverage.

5 In reaching this conclusion, the panel notes that even young and healthy new hires  
6 may have family members with chronic medical problems who will require lifelong health  
7 coverage spanning an employee's active employment and retirement. Moreover, many  
8 members of law enforcement retire more than a decade before becoming eligible for  
9 medicare at an age when healthcare is more expensive.<sup>31</sup> While raising a hue and cry over  
10 the possible elimination of fully paid dependent coverage for tier 1 retirees, the PAPOA  
11 proposal fails to account for the fact that lifetime health insurance coverage that includes  
12 family coverage is also an important part of any family's financial plan. This is especially  
13 true in an era where uninsured medical expenses can lead to loss of the family home and  
14 personal bankruptcy. While the City's proposal does not impact the hiring pool (except as to  
15 concerns that employees may have about the demand for further concessions), the PAPOA  
16 proposal would make the retiree benefit package significantly less attractive for purposes of  
17 recruitment and retention.

### 18 *The Vesting Issue*

19 PAPOA relies on the Supreme Court's decision in *Retired Employees Assn. Of*  
20 *Orange County, Inc. v. County of Orange* (2011) 52 Cal. 4<sup>th</sup> 1171 in which our Supreme  
21 Court held that under California law a vested right to health benefits may be implied under  
22 certain circumstances from a County ordinance or resolution. A reading of this case makes  
23 clear that whatever rights PAPOA represented employees may have cannot be determined in  
24 a factfinding proceeding under MMBA but rather would have to be determined in a state or  
25 federal court action in which each party has the right to discovery. Therefore, the panel has  
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27 <sup>31</sup> Even if the retiree obtains another position with health benefits, it is unlikely that the  
28 benefits will include family coverage in retirement.

1 determined that it would not be appropriate to address this evolving legal issue based on an  
2 incomplete record.

### 3 CONCLUSION

4 In sum, neither of the two proposals is without its drawbacks. The City's proposal,  
5 to some degree, is a departure from the mutual understandings of both parties that tier 2  
6 would be the lesser benefit, i.e., the City proposal may result in some tier 2 employees  
7 receiving a fully funded medical benefit in retirement while a more senior tier 1 employee is  
8 required to pay 10% of his or her retiree health costs.<sup>32</sup> Moreover, if allowed to continue  
9 under the successor agreement currently being negotiated, the City proposal will likely lead  
10 to prolonged and costly litigation, i.e., providing yet another obstacle to the achievement of  
11 cost savings. On the other hand, an eventual outcome of the PAPOA proposal would be to  
12 gradually eliminate tier 2 (and the statutory protection against fluctuating contributions), as  
13 well as dependent coverage in retirement, for PAPOA represented employees. In the  
14 panel's view, elimination of the minimum statutory contribution and dependent coverage for  
15 all new hires will likely have more of a negative impact on recruitment and retention than  
16 requiring only a closed universe of active tier 1 employees to contribute 10% of the cost of  
17 their health insurance in retirement. Finally, both proposals have a strong potential for  
18 damaging morale and creating divisiveness among unit members with dissimilar retiree  
19 benefit programs. Where both parties' proposals achieve comparable overall savings and the  
20 long-term financial impact of the PAPOA proposal is harder to predict, the City proposal,  
21 insofar as it promotes work force stability and financial security for retirees, better serves the  
22 welfare and interest of the public. Any third alternative that the panel might recommend to  
23 settle this dispute has not been subjected to any meaningful cost analysis or vetting. The only  
24 two alternatives that have been thoroughly examined with regard to their financial and non-  
25 financial ramifications are the City and PAPOA proposals presented to the panel as a final  
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27 <sup>32</sup> It is also true that the tier 1 employee, while paying a portion of his health costs, may also  
28 receive a larger dollar amount in employer contribution depending on his/her plan.

1 offer selection. While still encouraging the parties to search for better approaches to  
2 reducing the City's unfunded liability for retiree health benefits, the panel is constrained,  
3 based on the stipulation of the parties and the limitations of the record, to recommend the  
4 City proposal as the less undesirable of the two options.  
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6  
7 July 18, 2014  
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CATHERINE HARRIS, Chairperson  
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11 July 18, 2014

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BARRY DONELAN  
Union Panelmember  
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I concur ☐  
I dissent ☐  
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15 July 18, 2014

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EVERARDO "LALO" PEREZ  
Employer Panelmember  
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I concur ☐  
I dissent ☐  
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22 **SEE ATTACHED SIGNATURES OF PANELMEMBERS AND DISSENT**  
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1 offer selection. While still encouraging the parties to search for better approaches to  
2 reducing the City's unfunded liability for retiree health benefits, the panel is constrained,  
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4 City proposal as the less undesirable of the two options. ~~and, as a~~ ~~result,~~ ~~the~~

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7 July 18, 2014

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9 CATHERINE HARRIS, Chairperson

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11 July 18, 2014

BARRY DONELAN  
Union Panelmember

I concur ☐  
I dissent ☐

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14  
15 July 18, 2014

  
EVERARDO "LALO" PEREZ  
Employer Panelmember

I concur ☒  
I dissent ☐



1 offer selection. While still encouraging the parties to search for better approaches to  
2 reducing the City's unfunded liability for retiree health benefits, the panel is constrained,  
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4 City proposal as the less undesirable of the two options.  
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7 July 18, 2014  
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9 CATHERINE HARRIS, Chairperson

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11 BARRY DONELAN  
Union Panelmember

12  
13 July 18, 2014

I concur ☐  
I dissent ☒

14  
15 July 18, 2014

EVERARDO "LALO" PEREZ  
Employer Panelmember

I concur ☐  
I dissent ☐

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# Dissenting Opinion

## INTRODUCTION

These fact finding proceedings and the bargaining history presented over the past two years between the City of Palo Alto (hereinafter "the City") and the Palo Alto Police Officers' Association (hereinafter PAPOA) is one that can be best described as a litany of missed opportunities to protect the treasury of the City while maintaining a competitive yet sustainable benefit package for PAPOA members. The City's ineffective leadership has demonstrated an alarming lack of foresight, and squandered the opportunity to save money, while irreparably destroying labor relations with the only union that *volunteered concessions* in the midst of the Great Recession.

## BACKGROUND

The parties' dispute in this case focused on the narrow issue of retirement health benefits. In short, the City's longest-tenured employees are subject to the "Tier 1 Benefit" that provides a shorter five year vesting period that makes them eligible to receive medical insurance in retirement covering both the employees and their dependents.

In 2006, the parties agreed to create a new "Tier 2 Benefit" for new employees. At the time, both parties acknowledged the rising costs associated with the "Tier 1 Benefit", and in a collaborative effort to exercise fiscal prudence, decided on the reduced benefit for future employees. Although the parties preserved the status quo benefit for Tier 1 employees, the parties' agreement was an effective means to contain costs for the City. The "Tier 2 Benefit", which also provided dependent coverage, had a much longer vesting schedule, requiring 20 years of service in order to receive the maximum retirement medical benefit.

In 2007, the parties again worked collaboratively to address rising costs of retirement health care costs, agreeing to cap the maximum benefit for Tier 1 Employees at the second most expensive plan among the array of plans offered through CalPERS. Demonstrating its commitment to cooperative labor relations, the PAPOA went so far as to *actively encourage* their members to enroll in the less expensive PORAC plan, thereby saving the City millions of dollars.

Clearly, these modifications constituted a significant compromise for PAPOA members. The changes were bargained for, and displayed the strength of labor-relations. Unfortunately, this harmonious relationship between the parties did not last.

## BARGAINING HISTORY

In 2008, California and the Nation as a whole found itself in the midst of the Great Recession. With many municipalities witnessing a sharp decline in their revenues, public employers sought ways to contain cost. Although Palo Alto was fortunate to avoid any loss in revenue during the economic downturn, in 2010, the City did bring all of its labor unions together to once again address the costs associated with the City's medical benefits. During that series of meetings, the City announced its proposal, wherein it sought to require that current employees pay 10% of the cost of their medical

insurance premiums in retirement. With this proposal, the City projected a cost savings of \$129 million over 30 years.

In response, the coalition of City unions, including PAPOA, proposed what came to be known as "Option 12." That proposal included a lower cap on coverage for new hires, and required employees to begin making annual contributions during the term of their employment to offset the City's retirement medical liability. It is uncontested that Option 12 would have provided the City with a savings of at least \$207 million over the same 30 year period – *\$78 million more than the City's proposal*. Despite providing significantly greater cost-savings, the City rejected Option 12.

The City's fiscal irresponsibility continued into its negotiations on a successor memorandum of understanding with the PAPOA. In fact, as outlined in the majority's finding the City's own negotiator, Darrell Murray, testified that the City rejected other proposals submitted by the PAPOA that saved the City more money than the City's own proposal. The rationale of the City was to reject any proposal that did not have future retirees making contributions to medical premiums in retirement regardless of the fact that those rejected proposals would actually save the taxpayers of Palo Alto more money.

Given the City's incomprehensible stance on this matter, it is no wonder that the parties' discussions ended up at impasse.

### THE PROPOSALS

The City proposes that employees currently eligible for "Tier 1 Benefits" would have those benefits eliminated and be replaced by a fluctuating City contribution that follows what it makes for active employees (currently 90%). That contribution would be susceptible to change from year to year following the employee's retirement, making the City's reference to a "90/10 plan" a misrepresentation of its position. In fact, conceivably, in successor agreements, the PAPOA could negotiate (or the City could impose) a lower healthcare benefit amount in exchange for an alternative economic benefit for active employees, such as wage increases. With retired employees having no voting rights and no collective voice, their medical benefit would constitute collateral damage in a series of negotiations wherein neither party represents their interests. This uncertainty makes retirement planning difficult. In stark contrast to its proposal to modify the "Tier 1 Benefit", the City's proposal fully preserves the "Tier 2 Benefit" for newer employees, and maintains the same benefit for new employees. As the "Tier 2 Benefit" provides certainty in retirement planning, pursuant to the terms of the City proposal, it transforms from a reduced benefit to the vastly superior benefit. Perhaps more importantly, as the City has recognized the vested rights of current retirees and preserved the "Tier 2 Benefit" for both active employees hired after 2006 *and new hires*, the City's proposal seeks to reduce the benefit of the 34 longest-tenured employees in the union.

The PAPOA's proposal follows the cost saving model used previously by the parties, and routinely used by public agencies across the State. First, the PAPOA asserts that all of its active members maintain a vested right to their retirement medical benefits. To that end, the PAPOA proposal establishes a "Tier 3 Benefit" for new hires. This "Tier 3 Benefit", would provide new employees

with a single-party (i.e., employee only) retirement medical benefit after 20 years of service to the City of Palo Alto. As the City has hired more than 15 officers since the original hearing in this matter, it is clear that the rapid turnover in personnel will leave "new hires" as the largest pool of sworn employees in the matter of a few years. In addition to reducing the benefits available to new hires, the PAPOA proposal presents a modest compromise to the "Tier 1 Benefit" that is consistent with the parties' bargaining history and their undisputed intent. In summary, as these Tier 1 employees already enjoy a vested right to a fully paid retirement medical benefit, and the parties acknowledged that the "Tier 2 Benefit" was created to provide a lesser benefit, the PAPOA proposed that Tier 1 employees would be entitled to receive the greater of the following two amounts: (1) the monthly medical premium for the least expensive plan among the array of plans offered; or (2) the monthly medical premium provided to a similarly situated Tier 2 employee (based upon years of service).

### RAMIFICATIONS OF THE MAJORITY'S RECOMMENDATION

Much of the testimony and briefing in this matter focused on the legal point that PAPOA members, specifically Tier 1 employees, have a vested right to their retirement medical benefits. The majority opinion acknowledges this fact toward the end of its recommendation when it states "the City proposal will likely lead to prolonged and costly litigation, i.e., providing yet another obstacle to the achievement of cost savings." This correctly foresees that following these proceedings, should the City move to implement its proposal, the parties will enter into an arduous legal battle with no end in sight. Sadly, the City of Palo Alto need only look a few miles south to witness the consequences of such actions, as the City of San Jose continues to suffer as a result of the actions of its elected and appointed leaders, who pursued unilateral action at the expense of mutual collaboration.

After more than two years, the result of this panel's hard work is not an amicable resolution, but perpetuation of legal challenges. This is not an acceptable conclusion under any circumstance, and certainly not in this forum given that the *first element* in the eight prong analysis established by statute calls for the panel to consider the legal ramifications under state and federal law. It is very disappointing that the outcome to a process that is supposed to provide for resolution ends up encouraging litigation.

Another aspect reviewed by the panel was the cost savings to the taxpayers of Palo Alto. It is clear that the establishment, via the PAPOA proposal, of a "Tier 3 Benefit" will save the City money. Further, as the Palo Alto Police Department continues to hire new officers, those savings are set to increase substantially in the years ahead. The City proposal does not achieve those savings, even the City's own expert witness concluded that the PAPOA's "Tier 3 Benefit" costs roughly half as much as the existing "Tier 2 Benefit". As the taxpayers are inherently interested in the use of their hard-earned money, this clear opportunity to save should be grasped. The bottom line is that the City's proposal costs the City more money than the PAPOA proposal. This reality is clearly illustrated by the lost savings to the City, over the two years of these proceedings, which could have been attained as a result of so many new officers being hired under the "Tier 3 Benefit" instead of the "Tier 2 Benefit."

Much of the majority's analysis focuses on external comparability. The argument put forward by the majority is that the benefits offered by competing jurisdictions would be far superior to those provided under the PAPOA's "Tier 3 Benefit", thus putting the City at a "competitive disadvantage" when it comes to hiring. Given that the majority opinion specifically notes the City's argument that Palo Alto's "existing family coverage benefit is more generous than most of the comparator agencies, i.e., it is far more common for cities, such as Redwood City, Mountain View, Hayward, Milpitas, and San Leandro to offer *some percentage of single coverage*", it is curious that the majority developed its own theory that the "Tier 3 Benefit" providing single party coverage in retirement, would put the City at a "competitive disadvantage."

The majority would be better served by looking at the real impact of the of the City's proposal – not just on the City's ability to hire new officers, but to *retain* them – as the City proposal is likely to cause significant morale problems within the force. Certainly, having all new hires come in at the "Tier 2 Benefit" is advantageous in competing with other jurisdictions over offering the PAPOA "Tier 3 Benefit." However, once successfully employed as a Police Officer in Palo Alto, more senior Tier 1 employees – currently half of the workforce – will be assigned to train, lead, direct, and command many of the new officers. The retiree medical benefit possessed by those new officers would be more generous than the benefit offered to the senior training officers who have provided more than a decade of service to the citizens of Palo Alto. Those senior employees are bound to narrate the details of how this inverted relationship came to be. Having heard that account, what newer employee is ever going to believe the promise made to them by the City? In fact, as a serving Police Officer myself, I believe that those newer officers will quickly come to doubt the very foundation of their benefit package having heard what had happened to their senior colleagues.

Having been informed by the senior members of their plight, new hires will be drawn away to the competing agencies, lured not only by comparable wages and benefits, but the opportunity to avoid the terrible labor-relations between the City of Palo Alto and its unions. While new employees enter into the workforce with their eyes wide open, the proposed termination of a defined benefit for senior personnel that have no opportunity to remedy their misfortune (other than through litigation) will certainly lead to discord and morale problems.

As the final element of the statutory criteria provides a catch-all of any other relevant information, it is proper to consider the irony that as the City consistently preached "generational equity" to the PAPOA (and other bargaining groups) throughout the recession, yet the application of the City proposal appears *discriminatory*, as only one generation suffers a loss of benefits.

While the City claimed to want a "level playing field" and "generational equity" for all its employees, these politically correct talking points are not consistent with the application of its proposal. Despite the numerous examples of the inherent inequity of the City's proposal, the City has continued forward, thereby suggesting an ulterior motive. Although it should come as no surprise, at the hearing, it was discovered on cross-examination of the City Manager, that certain unrepresented employees – including the City Manager, and most of the City's most senior civil servants were subject to the "Tier 2 Benefit", and thus unaffected by the City's proposal when it was applied to other City employees.

### A PROPOSAL OF COMPROMISE

While the majority felt compelled to choose one proposal over the other, our purpose as a panel is to recommend terms of settlement. Over the course of two years, the parties have not come to an agreement on this matter, so the majority's opinion would appear to be of little value. Clearly, both proposals have drawbacks as they are concessionary in nature. However, having considered the parties' arguments, I suggest a compromise. The bargaining history prior to the 2008 recession was clear on the matter. In the past both sides worked together to find compromise and solutions to what both must have felt was their mutual goals. That type of teamwork is not evident now, and must be rediscovered if the parties are truly intent on restoring labor relations. To that end, I would propose that, if the City is to unilaterally implement its proposal that it agree to provide Tier 1 employees the opportunity to opt into the "Tier 2 Benefit". This would provide for a somewhat equitable solution (i.e., all employees share the same benefit), provide certainly for all PAPOA members, ensure competitiveness in the job market for Palo Alto police officers, and meaningfully address the City's fiscal concerns.

### CONCLUSION

Failing that compromise I can only accept the PAPOA proposal. At the time it was proffered to the City and this panel, it provided for a substantial long term savings to the City. Given the passage of time, and the availability of a revised actuarial analysis, it is clear that the PAPOA proposal is the only proposal that is sustainable, avoids the threat of litigation, and provides the greatest cost-savings to the City of Palo Alto. These issues have been left unresolved by the parties for far too long; the City proposal serves only to extend them further.



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